IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6962 of 1990

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAMNIKLAL GIRDHARLAL - Petitioner(s)

Versus

STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :

MR PV HATHI for Petitioner(s) : 1,
None for Respondent(s) : 1 - 2.
MR KETAN A DAVE for Respondent(s) : 2, 2.2.1, 2.2.2, 2.2.3, 2.2.5,2.3.1
RULE SERVED for Respondent(s) : 2.3.2,2.3.3
DELETED for Respondent(s) : 3,
NOTICE SERVED for Respondent(s) : 3.2.1, 3.2.2, 3.2.3, 3.2.4, 3.2.5, 3.2.6, 3.2.7,3.2.8 - 4, 4.2.1, 4.2.2, 4.2.3, 4.2.4, 4.2.5,4.2.6

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 04/10/2005

ORAL JUDGMENT

In this petition under Article 226/227 of the Constitution of India, the petitioner has challenged the legality and validity of the judgment and order passed by the Additional Chief Secretary

(Appeals), Revenue Department, State of Gujarat, dated 25th April 1990 in Revision Application SRD No. 3/1988 in dismissing the same and confirming the order passed by the Collector, Bhavnagar dated 31st January 1988 in Appeal No. 21/1986 in dismissing the same and confirming the order passed by the Deputy Collector, Bhavnagar dated 28th October 1986 in Revision Application No. 15/1985 in quashing and setting aside Entry No. 666 as well as Entry No. 736 with respect to the land bearing Survey No. 19, 21 and Survey No. 20-Paiki situate at Village Shampara (Khodiyar), District-Bhavnagar.

2. The dispute is with regard to the lands bearing Survey No. 19, 20 and 21 situate at Village Shampara (Khodiyar), District Bhavnagar. The petitioner purchased the said lands by Registered Sale Deeds and the name of the petitioner came to be mutated in the revenue record vide Entry No. 666 on 11th March 1983 and Entry No. 736 dated 30th June 1984. The aforesaid entries came to be taken under suo motu revision by the Deputy Collector, Bhavnagar being Revision Application No. 15/1985 and the Deputy Collector, Bhavnagar, set aside the Revenue entries on the ground that there was breach of Section 63 of The Bombay Tenancy and Agricultural Lands Act, 1948 [hereinafter referred to as “the Tenancy Act”] with respect to the transaction and/or sale in favour of the petitioner. Being aggrieved and dissatisfied with the order passed by the Deputy Collector,

Bhavnagar dated 28th October 1986 in Revision Application No. 15/85 in setting aside the aforesaid Revenue entries the petitioner and other persons preferred appeal before the Collector, Bhavnagar being Appeal No. 21/1986 which came to be dismissed by the Collector, Bhavnagar by order dated 31st January 1988. Being aggrieved and dissatisfied with the order passed by the Collector, Bhavnagar dated 31st January 1988 in Appeal No. 21/86 the petitioner preferred revision application before the State Government under Section 211 of the Bombay Land Revenue Code which came to be heard by the Additional Chief Secretary (Appeals), Revenue Department, State of Gujarat who by order dated 25th April 1990 dismissed the same confirming the order passed by both the authorities below in cancelling the aforesaid two entries. Being aggrieved and dissatisfied with the order passed by the Additional Chief Secretary (Appeals), Revenue Department, State of Gujarat, dated 25th April 1990 in Revision Application No. 3/1988 the petitioner has preferred the present Special Civil Application under Article 226/227 of the Constitution of India.

3. Shri PV Hathi, learned advocate appearing on behalf of the petitioner, relying upon the judgment of this Court in the case of Evergreen Apartment Cooperative Housing Society Vs. Special Secretary, Revenue Department, Gujarat State, reported in 1991(1) G.L.R. Page 113 and in the case of Janardhan D. Patel Vs. State of

Gujarat, reported in 1997(1) GLR Page 50 has submitted that the Revenue authorities while exercising RTS jurisdiction have no authority to consider breach of any of any other law. In the present case, the Deputy Collector has set aside the entries on the ground that the transaction/sale in favour of the petitioner is in breach of Section 63 of the Tenancy Act which is not permissible and therefore it is requested to allow the present Special Civil Application.

4. Shri Ketan Dave, learned advocate appearing on behalf of private respondents, has submitted that apart from the question whether the Deputy Collector was justified in quashing and setting aside the aforesaid two entries on the ground that there is breach of Section 63 of the Tenancy Act or not, subsequently in fact proceedings were initiated by the appropriate authority under the Tenancy Act and ultimately it is found that the transaction in favour of the petitioner was in breach of Section 63 of the Tenancy Act, and that the petitioner was not agriculturist and the orders passed by the competent authorities holding the sale transaction in favour of the petitioner was in breach of Section 63 of the Tenancy Act have become final. He has produced xerox copies of the same before this Court which are directed to be taken on record.

5. In view of the subsequent development and the orders passed by the competent authorities under

the provisions of the Tenancy Act and that it is reported that subsequent to initiation of proceedings under Section 84-C of the Tenancy Act the private respondent has paid the purchase price also, the dispute, which is raised in the present Special Civil Application with regard to the authority of the Deputy Collector to set aside the Entry on the ground that the same was in breach of Section 63 of the Tenancy Act, has become academic inasmuch as the appropriate authority under the provisions of the Tenancy Act more particularly the Section 63 thereof has now already held that the sale transaction in favour of the petitioner was in breach of the provisions of the Tenancy Act. Under the circumstances, the entry in favour of the petitioner cannot be continued and/or restored. The present Special Civil Application is therefore required to be dismissed.

6. For the reasons stated above, the petition fails and it is dismissed. Rule is discharged. Ad-interim relief stands vacated forthwith.

[M.R. Shah, J.]

rmr.